

# THE INTERIM

JUNE 2000

HELENA, MONTANA

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## SPECIAL LEGISLATIVE SESSION

Session Comes to an End...The special session of the 56th Montana Legislature ended on the evening of Thursday, May 11. The Legislative Services Division received 34 bill drafting requests of which five were not introduced. Four of 10 House bills passed, along with all three House joint resolutions. Seven of 13 Senate bills passed, along with 3 Senate resolutions. As of Monday, May 22, bills were in the final stages of approval. Legislative Services activated the LAWS system for the special session and it remains available. Final status, text of bills, and other session related information is available from the site: [http://leg.mt.gov/services/legal/00\\_sp\\_session.htm](http://leg.mt.gov/services/legal/00_sp_session.htm).

Legislative Services Division is finishing paying bills for the special session. Any legislator who has a claim should send it in as soon as possible. Should you have any questions on this, please contact Karen Berger at 444-3064. We want to complete all this work before the fiscal year end work, mixed with our move back to the Capitol, gets into full swing.

We have had a number of questions regarding the final cost of the special session. We will not know the final tally for sure until sometime in July. Concluding the session with 2 fewer legislative days than were budgeted certainly will lower the ultimate total, although the number of bills considered increased it to some degree also.

Legislative Fiscal Division is preparing an appropriation report summarizing appropriations actions. That publication will be available approximately at the same time that you receive **THE INTERIM**.

Other post session publications- journals, history and final status, session laws, and Montana Code Annotated section changes-will be published in a single booklet, expected to be available by July 15. Updated codification will be posted to the Internet and available through the Legislative Branch web site. A CD ROM with

updated codification also will be published but not until other information for the annotations is also available, probably in late August or September.

## LEGISLATIVE COUNCIL

Council to Meet in June...The Legislative Council will meet June 8 and 9 in Room 102 of the Capitol Building. A number of issues will occupy the members' time over the two days.

Legislator and Civic Education Strategies...The Legislative Council's number two priority strategic issue is how to improve new legislator education. A subcommittee will report on its progress toward designing enhanced orientation sessions.

The Legislative Council's top priority asks, "How can the Council educate the public about the legislative process?" The Council will review the work of the subcommittee that is studying the idea of televising the Legislature. That study is moving forward with quite some momentum at present. A more detailed summary of its work appears later in this issue of **THE INTERIM**.

Budget Issues...The Council will consider a number of budget issues, including:

- < operating budget amendment for current fiscal year;
- < operating budget approval for ensuing fiscal year;
- < preliminary budget issues for 2003 biennium budget; and
- < budget adjustments for Law, Justice, and Indian Affairs Committee and Public Information Subcommittee of the Legislative Council.

Land Transfer Issues...Land transfer issues to be reviewed include the exchange of the armory property in Plentywood to the City of Plentywood or Sheridan County under section 77-2-351, MCA, and the lease of the Xanthopolis Building on the Warm Springs Campus to the South West Montana Rehabilitation Corporation under section 77-2-302, MCA.

Executive Director Search...Thirty individuals applied for the Executive Director position. Nine of the 30 applicants will have preliminary interviews. The Council will establish a schedule for full Council consideration of finalists selected from the 9 semifinalists.

Judicial Redistricting Study...Susan Fox will present the study issues identified by the subcommittee. The Council will decide whether to go forward with a proposal for redistricting or to do further study in a future interim.

Legislative Proposals...The special session highlighted issues that the Council might wish to address legislatively (on approval, staff will draft proposals for the September meetings):

Statutorily authorize standing committees to meet prior to a called special legislative session with notice provisions, etc. This action would cure any potential challenge to the validity of work done, promote legislative efficiency, and expand the opportunity for public involvement in the legislative process.

Authorizing reimbursement for legislators for the day preceding a special session as a legislative day rather than an interim meeting day. This action would reduce significantly the processing burden for both legislators and staff associated with the routine payment of legislative salary and expenses for the day before the caucus.

Senate Bill 11 Review....Legislative Branch staff undertook a review of interim operations under the reforms instituted by Senate Bill 11 from the last session. Proposals deriving from that review will be presented to the Council. At Council direction, drafts implementing promising ideas will be prepared for the September meeting.

## INFORMATION TECHNOLOGY MANAGEMENT STUDY SUBCOMMITTEE

Subcommittee to Evaluate Governance Options....The Information Technology (IT) Management Study Subcommittee of the Legislative Finance Committee will convene on June 7 in a full-day session to consider changes to Montana's current IT governance structure. The meeting will be held in Helena in Room 487 of the Federal Building.

At its March 2000 meeting, the Subcommittee selected governance concepts for further research, including legislative guiding principles for IT, a governance board, and the creation of a Chief Information Officer at the cabinet level. The Subcommittee directed staff to research how other states use similar IT governance structures, how Montana's current governance structure compares to the proposed governance structures, and any fiscal impact of changing the governance structure. Staff researched governance structures in six other states, including North Dakota, South Dakota, Wyoming, Washington, Utah, and Arizona. Research and analysis results will be presented at the June 7 meeting.

For more information or if you wish to be placed on the Subcommittee's interested persons list, please contact Greg DeWitt or Pam Joehler by phone at (406) 444-2986, by e-mail at <gdewitt@mt.gov> or <pjoehler@mt.gov>, or by mail to the Legislative Fiscal Division, PO Box 201711, Helena, MT 59620-1711.

## POSTSECONDARY EDUCATION POLICY AND BUDGET SUBCOMMITTEE

Subcommittee Holds Final Meeting....The May 9 meeting of the Joint Subcommittee on Postsecondary Education Policy and Budget (PEPB) was the final meeting of the 1999-2000 interim. At that meeting, staff from the Legislative Auditor's office presented a progress report on the maintenance and operation performance audit of the Montana University System (MUS). Sandy Whitney of the Legislative Fiscal Division (LFD) presented two reports detailing the MUS student FTE and funding for fiscal years 1992 through 2000 and discussing alternative methods for funding higher education. Dr. Dick Crofts, Commissioner of Higher Education, discussed a "Strategy on University System Performance Indicators". The Subcommittee also took executive action to accept the SJR 16 final report as drafted and recommended that the 2001 Legislature continue lump sum funding for the MUS. Brief summaries of the reports are presented below.

Student FTE and Funding for 1992-2000....This report from the LFD provided information on the resident, nonresident, and total FTE students for all of the MUS units and colleges of technology (COTs) over a period of nine years and state and total funding for the same period. This information was then compared to the resident and nonresident tuition during those years. Resident enrollment declined by 1.25 percent at the six units but increased by 29.47 percent at the COTs. Total state funding per resident FTE declined by 5.3 percent while total funding per FTE increased by 21.07 percent. The entire increase in student funding was provided by tuition increases that totaled over 100 percent during the period.

Alternative Methods for Funding Higher Education....The report discussed current law, state policies and relationships within higher education, and potential policy changes that might be implemented through the use of alternative funding methods. Potential policy changes might include expanding opportunity for: lower income students, increased access to higher education, merit scholars, and access to any regionally accredited institution. Alternative funding methods depend on the policy desired and vary from total state funding to total privatization.

Strategy on University System Performance Indicators....Dr. Dick Crofts suggested that valid performance indicators for the MUS be developed through a partnership effort between the MUS and the state government/Legislature. He expressed concern that a unilateral university system action might appear self-serving. His proposal included suggestions that the indicators be:

- < a simple, limited system tailored to the needs of Montana;
- < based on consensus about policy goals;
- < funded with new money;

- < used to measure outcomes; and
- < worth the cost of development.

## MENTAL HEALTH MANAGED CARE SUBCOMMITTEE

To Meet in June...The Mental Health Managed Care Subcommittee of the Legislative Finance Committee will meet June 7 in Helena. The meeting will be held in Room B7 of the Federal Building beginning at 8:30 a.m.

Will Have Full Agenda...The Subcommittee will hear a panel discussion about the process of committing adults with serious and disabling mental illness (SDMI) to community services as opposed to commitment to the Montana State Hospital. The Subcommittee will also consider implementation of Senate Bill No. 534 (SB 534) passed by the 1999 Legislature. SB 534, in some instances, requires Medicaid managed care contractors to meet the licensure and financial solvency requirements for insurance companies.

Several standing agenda items will also be discussed, including population of the Montana State Hospital, reports on the Program for Assertive Community Treatment (PACT) contracts to provide community services for adults with SDMI, budget status of the Addictive and Mental Disorders Division, and public comment.

Subcommittee members have also requested information on the status of claims paid under the Mental Health Access Plan (MHAP), the fiscal year 1999 costs incurred when the state assumed financial responsibility for claims payment on termination of the MHAP contract with Magellan Health Services, and the adequacy of psychiatric service capacity.

To Begin Formulating Recommendations...Finally, the Subcommittee will begin the process of identifying issues and options to formulate recommendations to the Legislative Finance Committee. The Subcommittee will review recommendations of the Mental Health Oversight Advisory Council and the preliminary budget and program issues identified by the Department of Public Health and Human Services.

## REVISED TRAVEL POLICY

DOA Revises Travel Policy...The Department of Administration, under its authority to designate the locations and circumstances under which a person may claim the actual cost of lodging, has revised Chapter 1-0300 of the Montana Operations Manual, Volume 1, which relates to employee travel. Beginning June 1, 2000, and continuing through May 31, 2001, the following section has been added:

### 1-0340.25 In-State Travel - Lodging Reimbursement Rates at Actual Cost Subject to Federal Per Diem Cap

Except as provided for in section 1-0340.30, you are eligible to be reimbursed your actual out-of-pocket lodging expenses, not to exceed the federal per diem room rate for the location involved, plus the taxes on the allowable cost, for any location in Montana if:

1. your lodging occurs on or after June 1 but before October 1; or
2. you are attending a conference sponsored in whole or in part by a state agency and have obtained lodging at the conference facility.

The federal per diem rates for Montana are available through the Internet at <http://www.policyworks.gov/org/main/my/homepage/mtt/perdiem/travel.shtml>.

In addition, "Attachment A, In-State High Cost Areas", has been repealed and minor revisions have been made in sections:

- 1-0330.00, Reimbursement for Receiptable Lodging
- 1-0340.20, In-State Travel - Lodging Reimbursement Rates
- 1-0340.30, In-State Travel - Lodging Reimbursement at Actual Cost
- 1-0350.20, Out-of-State Travel - Lodging Reimbursement Rates

These revisions are effective June 1, 2000, through May 31, 2001. Before the 2001 expiration date, the Department of Administration will evaluate the impact of the changes on state travel and determine whether to make them permanent.

To determine the federal lodging per diem rate in effect for a specific location, visit the web site for Montana cities. The federal CONUS (Continental U.S.) rate is currently \$55 plus applicable taxes and is effective for all cities that do not have a separate federal maximum listed. At this time, Big Sky and West Yellowstone are the only Montana cities which have federal lodging per diem rates on the Internet web site that are different from the CONUS rate.

If you have questions regarding the policy changes, please call the financial services staff at the Legislative Services Division (444-3064), or call Cathy Muri, Administrator, Accounting and Management Support Division, Department of Administration.

## ENVIRONMENTAL QUALITY COUNCIL

Environmental Quality Council to Meet in Capitol...The Environmental Quality Council (EQC) will be holding its next meeting in Helena on Friday, July 28 in the

newly renovated State Capitol in Room 172. Set out below are the EQC Subcommittee reports.

To view the Council's or any Subcommittee's minutes from previous meetings, Council and subcommittee work plans, agendas, and press releases, please visit the EQC web site at <http://leg.mt.gov/services/lepo>. If you have any questions or would like additional information or to be placed on the EQC interested persons mailing list, contact Todd Everts by phone at 444-3747 or by e-mail at <teverts@mt.gov>.

Montana Environmental Policy Act (MEPA) Study...The Environmental Quality Council's MEPA Subcommittee held its eighth and ninth meetings of the interim on May 4 and May 10 in Helena. At those meetings the Subcommittee finalized its draft report on the evaluation and implementation of MEPA and developed draft findings and draft recommendations for improvement. The Subcommittee will not meet in June. The draft report, including the draft findings and recommendations, will be available June 1st on the EQC website at <http://leg.mt.gov/Services/lepo/index.htm>. Copies can also be obtained by contacting the EQC office. The Subcommittee's draft findings and recommendations may be viewed or obtained separately from the entire report. Public comments on the draft report will be solicited and should be submitted to the EQC office through the 1st week of July.

The Subcommittee will meet again at 1 p.m. on Thursday, July 27 in the newly renovated State Capitol in Room 152. The Subcommittee will be reviewing the comments received on the draft report and finalizing its work prior to presenting the report and its findings to the full EQC on the following day.

For more information, please contact Todd Everts at 444-3747 or by e-mail at <teverts@mt.gov>, or Larry Mitchell at 444-1352 or by e-mail at <lamitchell@mt.gov>.

Water Policy...The EQC's Water Policy Subcommittee will be seeking public comment on the following draft proposals regarding regulation of swine facilities:

- < Require financial assurance to pay for the costs of closure, postclosure care and corrective action for swine operations with more than 1,000 animal units (2,500 swine larger than 25 kilograms--approximately 55 pounds). DEQ would be required to adopt rules governing the amount and types of financial assurance.
- < Encourage or require the Montana Board of Environmental Review to amend its rules to require individual permits rather than general permits for swine operations with more than 1,000 animal units.

A draft report will be available on the web or by mail after June 19. Comments are due by July 10. The draft report will also include a brief overview of recent court

decisions related to water quality and quantity. After considering public comments, the Subcommittee will make a decision regarding its recommendations to the EQC during the Subcommittee's next meeting, to be held in the evening of July 26 in Room 152 of the Capitol. For a copy of the draft report or for more information about the Water Policy Subcommittee, visit the EQC web site at <http://leg.mt.gov/Services/lepo/index/htm> or contact Mary Vandenbosch at 444-5367 or e-mail at <mvandenbosch@mt.gov>.

Land Use/Environmental Trends...The Land Use/Environmental Trends Subcommittee will be seeking public comment on options to help communities pay for the development and implementation of local growth policies (comprehensive plans or master plans). Options include:

- < appropriating \$2 million each biennium for a grant program to provide matching grants of up to \$50,000 to cities, counties and towns. A portion of the funds would be allocated for grants to rural counties. Options for funding sources include a combination of the general fund and the portion of the coal severance tax that is currently distributed to counties for land planning and a portion of the lodging facility use tax (bed tax) revenue.
- < authorizing additional options for local governments to raise revenue to pay for growth policies. Options include local option sales tax, local option bed tax, and an exemption from the property tax freeze, possibly in combination with an increase in the special mill levy for planning.

A draft options paper will be available on the web or by mail after June 19. Comments are due by July 10. After considering public comments, the Subcommittee will make a decision regarding its recommendations to the EQC during the Subcommittee's next meeting, to be held on the morning of July 27 in Room 152 of the Capitol. For a copy of the draft report or for more information about the Land Use/Environmental Trends Subcommittee, visit the EQC web site: <http://leg.mt.gov/Services/lepo/index.htm> or contact Mary Vandenbosch by phone (444-5367) or by e-mail <mvandenbosch@mt.gov>.

Eminent Domain...The Eminent Domain Subcommittee held its meeting in Helena on Thursday, May 4 at the Federal Building. The meeting was well attended. This was a work meeting for the Subcommittee, which included the development of findings and draft recommendations for presentation to the full EQC. The final recommendations will be determined by the Subcommittee at its July 27 meeting, following a public comment period. The public comment period for the draft Eminent Domain Final Report will begin on June 1 with comments due by July 25. Once the final recommendations are developed, these will be presented to the EQC for review at the July 28 EQC meeting.

If you are interested in viewing a copy of the draft final report, it will be posted

to the Internet website listed below by June 1. If you do not have access to the Internet or would prefer to receive a hard copy version of the draft final report, please contact Krista Lee at 444-3957 or at <klee@mt.gov>.

The next meeting of the EQC Eminent Domain Subcommittee will be held on July 27 in Helena. The meeting will start at 1p.m. and will be held in the State Capitol, Room 172.

Outlined below are the draft findings and recommendations of the Eminent Domain Subcommittee. If you would like to send in comments regarding the draft findings and recommendations, please send them to Environmental Quality Council, Att: Krista Lee, P.O. Box 201706, Helena, MT 59620-1706.

Work Plan Task	Findings	Draft Recommendations
<b>Entities Authorized to Exercise Right of Eminent Domain</b>	No further discussion - directly tied to public uses	
<b>Federal/State Relationship</b>	No further discussion.	
<b>Reversion of Property</b>	Current law is adequate.	Make no changes to current law.
<b>Mitigation Measures</b>	Some property owners expressed concern with ability to negotiate mitigation measures within context of eminent domain process.  Landowner has responsibility & legal recourse to negotiate settlement & mitigation measures.	Address fact that landowner has responsibility & legal recourse to negotiate settlement & mitigation measures in <u>Eminent Domain handbook</u> .
<b>Standards &amp; Specifications</b>	No further discussion.	
<b>Rights of Reentry</b>	Current law is adequate.	Make no changes to current law.

Work Plan Task	Findings	Draft Recommendations
<b>Type of Interest Taken</b>	Interest in property taken is limited to easement unless condemnor proves in court that greater interest is necessary.  Current law is adequate.	Make no changes to current law.
<b>Possession of Property</b>	Montana Constitution states that condemnor may take possession of property, at discretion of court, upon payment into court of amount claimed by condemnee in condemnee's claim of just compensation.  Condemnor highly unlikely to take possession of property prior to appeal on public interest or necessity.	Make no changes to current law.
<b>Burden of Proof</b>	Subcommittee discussed issue of "clear & convincing evidence" standards but needs more information on issue prior to making decision on recommendation.	Make no changes to current law, leaving burden of proof for condemnor at preponderance of evidence.
<b>Public Uses</b>	Legislature is solely responsible for delineating "public use."	Make no changes to current law.
<b>Just Compensation</b>	Current law is adequate.	Make no changes to current law.

Work Plan Task	Findings	Draft Recommendations
<b>Liability</b>	Public has expressed concern regarding property owner's potential liability in association with projects installed on easements on their property through use of eminent domain.	Incorporate liability language into eminent domain statutes. For example: <ul style="list-style-type: none"> <li>&lt; limit liability of owner to instances of negligence or intentional conduct</li> <li>&lt; indemnify for costs &amp; attorney fees for owner made party to action but not found liable for damages</li> </ul>
<b>Use of Interest Taken</b>	Current law is adequate.  Current law is not well understood.	Add language to Title 70, Chapter 30, MCA, that states condemnor may take property only for public use specified in condemnation order.  Include discussion of use of interest in <u>Eminent Domain Handbook</u> . Should state that condemnor may take property only for public use specified in condemnation order.
<b>Due Process</b>	Current law is adequate.	Make no changes to current law.

Work Plan Task	Findings	Draft Recommendations
<b>Necessity/Public Interest</b>	Public interest not specifically defined in statutes governing eminent domain.  Public opinion indicates there is clear disagreement over issue of public interest.	Make no changes to current law.
<b>Eminent Domain Statutes in General</b>	Statutes generally hard to interpret & understand. References to eminent domain located throughout MCA.	Consolidate all eminent domain-related statutes in one place in MCA, if legally possible, or provide references to other statutes dealing with eminent domain. Clarify current statutes where possible, except where language must be maintained due to established legal precedent.
<b>Handbook</b>		

## SUMMARY

### 1. Is eminent domain being implemented in the best possible manner?

The Subcommittee determined that eminent domain was being implemented in the best possible manner with respect to the following elements:

- < reversion of property;
- < possession of property by the condemnor;
- < due process;
- < burden of proof in eminent domain actions;
- < rights of reentry;
- < type of interest taken in property;
- < public uses enumerated;
- < just compensation; and
- < necessity and public interest.

2. Are the current eminent domain statutes adequate?

The Subcommittee determined that the eminent domain statutes were adequate with respect to the following elements:

- < reversion of property;
- < possession of property by the condemnor;
- < due process;
- < burden of proof in eminent domain actions;
- < rights of reentry;
- < type of interest taken in property;
- < public uses enumerated;
- < just compensation; and
- < necessity and public interest.

3. Is there a need for revising the laws related to eminent domain?

The Subcommittee determined that the following parts of Montana's eminent domain laws need to be revised:

- < liability associated with an interest in property acquired through eminent domain actions -- add liability language to statutes;
- < use of interest taken by eminent domain actions -- clarify statutes; and
- < eminent domain statutes in general -- (1) clarify current statutory language and (2) reference all areas of the MCA where relevant matters of eminent domain are located.

4. Is there a potential benefit of revising the laws related to eminent domain?

The Subcommittee determined that the following parts of Montana's eminent domain laws would benefit from revision or inclusion in the statutes:

- < liability associated with an interest in property acquired through eminent domain actions -- add liability language to statutes;
- < use of interest taken by eminent domain actions -- clarify statutes; and
- < eminent domain statutes in general --- (1) clarify current statutory language and (2) reference all areas of the MCA where relevant matters of eminent domain are located.

To view the minutes from previous meetings of the Subcommittee, the Subcommittee's work plan, and the draft final report on the eminent domain study, please visit the EQC web site at: <http://leg.mt.gov/Services/lepo/index.htm>. If you have questions or would like additional information please contact Krista Lee at 444-3957 or at <klee@mt.gov> .

**BUSINESS, LABOR, AND AGRICULTURE COMMITTEE**

To Meet in June...The Business, Labor, and Agriculture Committee has scheduled its next meeting on June 22 and 23, in Room 152 of the State Capitol, beginning at 9 a.m. Tentative agenda items include presentations from each of the agencies assigned to the Committee for program review and monitoring, a preliminary discussion of the previously requested bill drafts, and a detailed review of the HB 515 Committee recommendations.

If you have any questions regarding the activities of the Committee please contact Gordy Higgins at 444-3064, or by e-mail at <gohiggins@mt.gov> .

**LAW, JUSTICE, AND INDIAN AFFAIRS COMMITTEE**

To Meet During Summer...The Law, Justice, and Indian Affairs Committee will likely meet in Helena toward the end of June or in mid-July. Committee members will be polled for their preference and individuals on the Committee's interested persons list will be notified when a date is scheduled. The Committee will conduct its final meeting of the 1999-2000 interim on August 24 and 25.

For further information, please contact Leanne Kurtz at 444-3064 or by e-mail at <lkurtz@mt.gov> .

**TRANSITION ADVISORY COMMITTEE**

To Meet in June...The Electric Utility Industry Restructuring Transition Advisory Committee (TAC) is scheduled to meet on June 23 in Helena. If circumstances allow, the group will convene in one of the newly renovated hearing rooms in the State Capitol Building.

The agenda has not been set yet, but it will likely include discussions of and updates on the following topics:

- < the status of the Montana Power Company's sale of its energy distribution systems, including prospective bids for purchase from a consortium of Montana cities in MPC's service territory and from a coalition of electrical cooperatives in the state;
- < the consequences of the proposed sale and recent court decisions on various procedural stages of the transition to retail competition;
- < the formation of a regional transmission organization (RTO), and the timeline for its entering into force in the Northwest electricity market;
- < the progress to date of the Bonneville Power Administration's subscription process for multi-year contracts with qualified purchasers; and
- < Montana legislators' participation in the Legislative Council on River

Governance, a four-state coalition concerned about water and power issues in the Columbia Basin.

In addition, the TAC will consider what, if any, legislative changes the Committee will recommend to the Legislature in keeping with the intent and provisions of Senate Bill 390 (1997) and subsequent restructuring measures.

For further information or the agenda for June 23, please contact Research Analyst Stephen Maly at (406) 444-3064, or send an e-mail message to <smaly@mt.gov>. Internet users are invited to visit the TAC web page at [http://leg.mt.gov/Interim\\_Committees/TAC](http://leg.mt.gov/Interim_Committees/TAC).

## PUBLIC INFORMATION SUBCOMMITTEE

To Prepare Report for Council... On June 8, from 10-12 a.m. in Room B7 of the Federal Building in Helena, the 4-member Public Information Subcommittee will prepare its update on the feasibility study for televising the Legislature. The report will be presented to the full Legislative Council later in the day, and it will include a proposal to go forward with experiments utilizing a closed circuit TV system that is being installed in the State Capitol Building as part of the restoration project.

This first phase of a multi-staged approach to broadcasting legislative deliberations and other state government activities will entail the purchase and positioning of television monitors in the Capitol, the use of computer servers and special software to allow for audio and video "streaming" to a select Intranet audience in the capitol complex, and contracting for production services during the 2001 session. In effect, these experiments will add a "show and tell" component to the feasibility study that will be presented to the Legislature on behalf of the Council towards the end of the year. Senators and representatives, as well as state agency personnel and visitors to the Capitol during the next session, will thus get a preview of things to come in the event the Legislature acts to fund and implement the build-out phases of the project.

The group's work plan outline, schedule, and Progress Reports are accessible to Internet users at the Legislative Council's home page, located at <http://leg.mt.gov/Services/LegCouncil.htm>. Paper or electronic copies of these same documents, as well as forthcoming reports, are also available on request from Research Analyst Stephen Maly. Call 444-3064 or send an e-mail to <smaly@mt.gov>.

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

To Meet in Newly Renovated Capitol... The Education and Local Government Committee will meet on June 22 and 23 in Room 137 of the newly-renovated Capitol Building. The Local Government Subcommittee will meet on the afternoon of June 22 with the full Committee meeting on June 23.

The Committee will review a number of bill draft proposals relating to out-of-school district tuition, single-member county commission districts, school elections, and public notice provisions for local governments. In addition, the Committee will discuss some possible changes to the Committee's duties under Senate Bill 11 that reorganized the interim committee structure.

For further information, please contact Connie Erickson at 444-3064 or at <cerickson@mt.gov>. The meeting agenda and the bill draft proposals will be posted on the Legislative Branch website at <http://leg.mt.gov>. From there, click on "Committees", which will take you to a list of interim committees, then click on "Education and Local Government Committee".

## STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS COMMITTEE

Committee Meets During Special Session... Taking advantage of the May special legislative session, the State Administration, Public Retirement Systems, and Veterans' Affairs Committee (SAIC) met a few hours on May 9 and May 10. During the May 9 meeting, the SAIC received background information on each of Montana's public retirement plans to prepare for its August 4 public hearings to preview potential retirement plan legislation for the 2001 Session. The May 10 meeting was devoted to reviewing the SAIC's preliminary findings and recommendations on the SJR 9 study of state contracting laws.

Preliminary Recommendations in State Contracting Study... Following a collaborative discussion among SAIC members, legislative staff, Department of Administration (DOA) officials, and others, the Committee took the actions listed below.

Requested staff to prepare legislation to establish reciprocity for resident preferences and eliminate several existing preferences.

Requested staff to prepare legislation expanding the procurement options beyond "sealed bid" and "sealed proposal". The legislation will allow the state to employ more procurement concepts, for example: "best value", problem oriented proposals, "requests for quotation and qualifications", the expansion of the sole source definition, "design/build", and promotion of e-commerce.

Requested staff to formally prepare legislation regarding interest rates on overdue payments. The interest rate to be paid by the state for past-due amounts that are due to legitimate disagreements with vendors should be 10% annually. For past-due amounts resulting, essentially, from the state's neglect, the interest rate should be simple interest (not compounded) at 0.05% per day (18.25% annually).

Requested staff to formally prepare legislation regarding bid/award protests and the processes available with respect to protests. A vendor who is unsuccessful at securing a contract award may, after stating the reasons for the appeal, including a citation of the law allegedly violated, request a departmental review as an initial remedy. If the vendor or the state is not satisfied with the results of the initial review, either side may file suit in the proper court.

Requested staff to formally prepare legislation regarding the general applicability of the Montana Procurement Act. In short, the Act applies unless another statute specifically states that the Act does not apply. For example, highway construction, in Title 60, MCA, and building construction, elsewhere in Title 18, are specifically exempted from the Act.

Requested staff to formally prepare legislation revising current law to clarify policy on contracts between the state and current or former employees. The statutory language should clarify to whom and under what conditions the restrictions apply. The goal of the legislation is to guard against improper contract relationships and the appearance of improper relationships.

Requested staff to formally prepare legislation regarding the scope of the Montana Procurement Act to ensure that procurements made with funds granted by the state follow the Act. Exceptions to the "grant funds" provisions could be allowed, for example, to a landowner obtaining a secondary grant for environmental remediation, reclamation, conservation, or similar activities.

The several concepts contained in the preceding recommendations will be included in a single bill that will be drafted and introduced "by request" of the SAIC. The Committee also will recommend an initiative, to be accomplished primarily by appropriating resources to the Department of Administration, to enhance the state's capacity for designing better solicitations for supplies and services, for better coordination among procuring agencies and offices, for better management of state contracts, and for better enforcement of contract provisions. In general terms, the

legislation will address procurement outreach, procurement training, and procurement staffing. The legislation is to include funding and will be introduced as a stand alone (dog and cat) appropriation bill. The outline of the legislation includes:

1. for procurement outreach, the DOA will:
  - < develop and execute an outreach initiative patterned after the Oregon Partners in Purchasing program. The initiative will likely be activities held in conjunction with a statewide, high-participation, high-profile buyers' conference and vendors' fair. Est. cost: ±\$25,000 annually, with includes 1/2 FTE.
  - < establish automatic notification of vendors by Internet e-mail. In conjunction with the notification system, the DOA will develop and deploy systems to allow the submission of bids and proposals over the Internet and to allow bid award over the Internet. The systems should also provide for both the submission and payment of claims over the Internet. Est. cost: ±\$45,000 purchase (one-time) and ±\$1,500 annual maintenance. (The cost of Internet security/encryption, if more is necessary, is not included in the estimate.)
2. for procurement and contract management training, the DOA will:
  - < will take a two-pronged approach. First, DOA will employ appropriate national certification programs as a competency indicator for certain decisions regarding hiring or retention as a contracts officer or assistant or as a contract manger. Concurrently, the DOA will develop and employ state certification programs as a competency indicator for certain decisions regarding hiring or retention as a contract officer or assistant or as a contract manager. The certification and training initiative will occur gradually, targeting an estimated 15 contract officers/assistants each year and 15 contract managers each year. The estimated cost is \$500 for each person obtaining certification and training, plus the expense (±\$45,000) for developing and delivering on-going, state-specific training; includes 1/2 FTE. (Total of ±\$75,000 annually.)
3. for procurement, contract management, and contract enforcement staffing:
  - < in addition to current staff, authorize and fund one additional DOA contract officer and one additional DOA contract assistant for the FY 2002-03 biennium. Est. cost is ±\$72,500 annually;
  - < in addition to current staff, authorize and fund one contract manager for the FY 2002-03 biennium. Est. cost is ±\$47,500 annually.
  - < assess current demand for and use of contract litigation support. Determine the level to which agency legal counsel and Agency Legal Services staff (DOJ) provide contract litigation support. Also

- < determine the use of private attorneys for contract litigation support.
- < during next interim, investigate the needs in non-DOA agencies for procurement staff, contract management capacity, and contract enforcement (litigation) support.
- < summary of estimated cost in the first fiscal year:
 

\$ 25,000	outreach, patterned after Oregon's program
\$ 46,500	automated notification, solicitation, bid submission/award, accounting, etc.
\$ 75,000	contract officer/manager training
\$ 72,500	contract officer/assistant staffing
\$ 47,500	contract manager staffing
± \$266,500	subtotal for initiatives

The annual cost of the initiatives will decrease to \$221,500 in subsequent years due to the ± \$45,000 one-time cost for purchasing the automatic notification, bidding, accounting system(s).

The SAIC will continue its review and discussion of state contracting issues at a meeting in Helena on June 20-21. In addition to the recommendations discussed previously, a draft final report will be prepared to include an overview of the Committee's activities, as well as the Committee's findings and conclusions that underpin the recommendations. If not available for review by the June meeting, the draft report will be available to the Committee members and other interested persons for a 30-day period upon completion.

To Continue Study of Retiree Health Care Issues... During the June 20-21 meeting, which will be held in Room 102 of the State Capitol, the SAIC will also continue its examination of retiree health care costs and pre-funding issues. An IRS tax law and health care financing consultant will provide expert testimony on the merits or disadvantages of various financing vehicles that the Legislature might consider as a means to help employees and retirees pay the escalating costs of health care after retirement. The agenda will also include case study presentations on private vendor products being offered to public employees and employers.

For additional details about the SAIC or the June meetings, call Dave Bohyer or Sheri Heffelfinger at 444-3064 in Helena or check the SAIC website at [http://leg.mt.gov/Interim\\_Committees/STATE\\_ADMINISTRATION/index.htm](http://leg.mt.gov/Interim_Committees/STATE_ADMINISTRATION/index.htm).

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

To Meet in June... The next meeting of the Children, Families, Health, and Human Services Committee is scheduled for Wednesday, June 21 in Room 172 of the Capitol Building. The agenda will include reports from the DPHHS on its executive planning process, FAIM II, the Montana Dental Access Coalition, and the Governor's Council on Families. The subcommittee on the Tobacco Settlement will be reviewing the status of various proposals, including the special session bills and fiscal information. The Committee will receive a briefing on a Legislative Finance Committee staff report on possibilities for the TANF block grant.

All Committee minutes, reports, and agendas and a link to Montana Dental Summit Information have been posted to the new interim committee website at: [http://leg.mt.gov/interim\\_committees/](http://leg.mt.gov/interim_committees/).

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <[sfox@mt.gov](mailto:sfox@mt.gov)> , or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## DISTRICTING AND APPORTIONMENT COMMISSION

Commissioners Attends "Boot Camp"...Commissioners Sheila Rice and Joe Lamson and Commission staff attended a National Conference of State Legislatures Redistricting "boot camp" in Savannah, Georgia. Information from the conference will be shared at the Commission's next meeting in September at which time the Commission will adopt its criteria for redistricting.

Software Selected... The software package autoBound by Digital Engineering Corporation has been selected for redistricting. It is PC-based using an ArcView geographic information system and will provide a powerful tool for developing redistricting plans and the production of maps and reports. Staff will be loading the software and receiving training over the course of the summer and will be developing ways for the public to access the information through the Legislative branch website. More news will follow in future issues of **THE INTERIM**.

For more information or if you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <[sfox@mt.gov](mailto:sfox@mt.gov)> , or by mail to Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

## LEGISLATIVE FINANCE COMMITTEE

LFC to Meet in June...The Legislative Finance Committee (LFC) will meet in Helena on June 8 and 9 to hear a number of reports and discuss several issues. The meeting will be held in Room 137 of the Capitol Building. Key issues to be presented and discussed are as follows:

- < presentation of the LFD Legislative Fiscal Report for the May 2000 Special Session;
- < Information Technology Management Study governance recommendations;
- < HB 540 impact on local governments and school districts;
- < creative use of TANF funds, including reducing general fund in other programs;
- < Department of Corrections' fiscal 2000 budget issues;
- < authority for fund transfers in "cat and dog" bill appropriations;
- < recommended action on metal mines performance bonds and state liability; and
- < agency requests for:
  - < transfer of appropriation authority from fiscal 2001 to fiscal 2000;
  - < operating plan changes (SB 19); and
  - < budget amendments.

A copy of the tentative agenda for the LFC June meeting is available on the LFD website at [www.leg.mt.gov/fiscal/index.htm](http://www.leg.mt.gov/fiscal/index.htm).

## SUBCOMMITTEE ON STATUTORY APPROPRIATIONS AND DEDICATED REVENUE

Subcommittee to Meet in June...The Subcommittee on Statutory Appropriations and Dedicated Revenue narrowed its review this biennium to the analysis of state special revenue accounts where the revenue source is fines or forfeitures. These accounts and the lodging facility use tax will be topics for discussion at the June meeting, scheduled for June 8 at 8 a.m. in Room 487 of the Federal Building.

For more information, please contact Lorene Thorson by phone at (406) 444-2986, by e-mail at <[ltorson@mt.gov](mailto:ltorson@mt.gov)>, or mail to the Legislative Fiscal Division, PO Box 201711, Helena, MT 59620-1711.

## CENSUS 2000

Census day has come and gone but census enumerators will be following up on missing forms and completing census activities. If you have not received a census form or had a census enumerator visit your home, please contact 1-800-471-9424 and you will receive instructions on how to be counted!

## THE BACK PAGE

### DO THE SUBTERRANEAN RUMBLINGS CENTERED ON THE INITIATIVE PROCESS MEAN IMMINENT ERUPTION?

By Sheri Heffelfinger, Research Analyst  
Legislative Services Division

#### INTRODUCTION

It was raining and the sky was as black as the hot ash that choked the skies after a small earthquake uncorked the subterranean fury of Mount St. Helens one eerily calm spring day....just wanted to get your attention. Actually, it is raining in Oregon, but not hot ash, hot ballot initiatives. And, although taking a glimpse of the popular initiative process may not compete with the spectacular violence of a volcanic explosion, it's hard to resist watching and waiting, like a curious volcanologist, to see what the future of Montana's initiative process will be. A slight tremor, the earth moves, and the volcano's long-dormant power is unleashed in an awesome pyrotechnic display. In moments, the awesome blast forever changes the political landscape for miles around.

While recently reading an April 12, 2000, article in the Salt Lake *Tribune* entitled "Oregon Citizens Set the Pace for Direct Democracy With Initiative Process", I felt a tremor shake our republican government. After detailing how Oregon voters seemed more intent than ever in racing headlong toward direct democracy, the article quotes a person speaking about an activist who runs a signature gathering company, "He really owns the initiative process in this state and it's given him more power than any elected official in the state." Is a long-dormant, snow-covered volcano about to erupt in Montana?

#### TYPES OF INITIATIVES

First of all, there's a difference between an initiative and a referendum. The initiative process is initiated by citizens to adopt or change statutory law or to amend a state constitution. While many states have state and local initiative processes, many do not, and, there is no national initiative process. Montana is one of 24 states with a statewide initiative process. The referendum process, which is not used as often as the initiative process and is not discussed in further detail in this article, is the process by which citizens can reject or approve a statutory law or a constitutional amendment referred to them (i.e., submitted to a popular vote) by the state

legislature.

Second, there are two types of initiative processes, direct or indirect. A direct initiative process allows ordinary citizens who have gathered the requisite signatures to qualify an initiative for the ballot. If passed, the initiative becomes law, thus bypassing the legislature. An indirect initiative process, on the other hand, requires the qualifying initiative to go through the legislature. The legislature has the authority to pass, reject, or amend the original proposal and thus, to determine whether or not the initiative will actually be placed on the ballot for a popular vote. Of the 24 states with some type of initiative process, Montana is one of 16 states that use a direct initiative process. Utah and Washington provide for both an indirect and a direct process. Sixteen of the 18 states that provide for a direct process, allow the direct initiative process for proposing amendments to the state constitution.

### REPRESENTATIVE GOVERNMENT AND DIRECT DEMOCRACY

Is representative democracy in danger of being overwhelmed by an explosion of direct democracy through the initiative process? Not by a long shot, say initiative process supporters who view initiatives as a vital check against a legislature's "sins of commission" or "omission" (to quote David Magleby, author of Direct Legislation: Voting on Ballot Propositions in the United States published in 1984). And, supporters will often invoke Teddy Roosevelt's famous quote: "I believe in the Initiative and Referendum, which should be used not to destroy representative government, but to correct it whenever it becomes mis-representative." But whatever the particular arguments about how the initiative process should work, all arguments in favor of initiatives at all lead to the central belief that initiatives are not direct democracy, but rather a process affirming that the people are the only true sovereign.

One historical survey entitled "A Century of Citizen Lawmaking: An Experiment in Self-Governance", written by Dane Waters, President of the Initiative & Referendum Institute, reports that initiatives have been used less than 1,900 times since 1898 (when South Dakota became the first state to adopt an initiative process). The paper notes that only 40% of those initiatives actually passed, which is a fact Waters uses to support the argument that citizens have been quite cautious in exercising the power to bypass state legislatures. Nonetheless, those initiatives that have passed have dramatically changed the political landscape. In his paper, Waters documents how the initiative and referendum movement was strongly advocated by the Populist Party of the 1890's. The Populists were fed up with monied interests controlling the lawmaking process. Voting rights for women, secret ballots, and direct election of U.S. senators were also among the radical ideas forwarded by Populists. But, Waters' historical survey concludes that initiatives have been a powerful tool for reform, taking on such explosive issues as campaign finance reform, abortion, term

limits, environmental protection, and tax reform. But which interests have been served? Water argues that no political ideology has monopolized the process. Victories and losses seem to be evenly shared.

### MONTANA'S HISTORICAL EXPERIENCE

As for Montana's history, David Schmidt's book, Citizen Lawmakers: The Ballot Initiative Revolution reports that in 1906, by a 6 to 1 margin and with a majority in all counties, Montana voters passed a constitutional amendment proposed by the legislature to give citizens the ability to enact or amend statutory law through the direct initiative process. In 1972, Montana's constitutional convention delegates voted to add to the new constitution the right of citizens to amend the constitution through a direct initiative process. Is Montana situated over a dormant volcano where subterranean forces are building, waiting, ready at the urging of one small earthquake to unleash an explosion of molten rock and hot ash in a dramatic display of power that will reconfigure the political landscape in the brief time it takes to count the votes?

Statistics compiled by the Initiative & Referendum Institute reveal that between 1906 and 1998, Montanans have used the initiative process only 64 times, with exactly half of the proposed initiatives passing. The most number that actually qualified for a single ballot was 5, in 1996. (Just in case you're curious, among the 24 states with some type of initiative process, Montana ranks 10th overall in the total number of ballot initiatives ever proposed. Oregon takes top honors with 300, which works out to an average of a little more than 3 initiatives per year actually qualifying for the ballot since 1902, when that state first adopted an initiative process.) These statistics may lend one to conclude that the volcano is showing no signs of imminent danger.

Nonetheless, the ground in Montana has certainly been rumbling. Between 1997 and 1999, 16 initiatives were submitted, 7 made it to the ballot, and 6 passed. Among the initiatives passed were Constitutional Initiatives 75 and 137. CI 75 would have required voter approval of all tax increases. But, although it was passed by the voters 51% to 49%, a law suit was filed and the Montana Supreme Court threw it out on the grounds that the initiative did not comport with the constitutional law requiring that each initiative make only one amendment. Montana voters also passed CI 137 to prohibit cyanide processing in open pit mining. But this, too, set off a tremor of controversy. The 1999 Legislature, clearly rattled by aftershocks from these initiatives, introduced a flurry of bills to amend Montana's initiative process, including four bills proposing to increase the number and change the geographical distribution for signatures required to qualify initiatives for the ballot. Two other bills proposed various statutory reforms to the laws specifying the form of the initiative petition and revising the review process.

None of the bills passed, but the Montana Consensus Council has been facilitating a dialogue among various parties about what legislation to reform the initiative and referendum process, if any, should be proposed for the next session. In the meantime, 8 direct initiatives are in the works for the November 2000 ballot. One is a direct reaction to the Montana Supreme Court's overturning of CI 75. The proposed initiative would eliminate Montana's constitutional provision requiring separate initiatives for each proposed constitutional amendment and would also seek to prohibit the Montana Supreme Court from reviewing the constitutionality of a ballot initiative adopted by voters.

As a volcanologist wannabe, I'm watching the mountain for signs of imminent eruption, trying to carefully interpret steam vent activity, and measuring the location and significance of underground tremors. Will this initiative be the quake that sets off an explosion that will forever change the political landscape? (Actually, I've been too busy to devote much attention to this, but I love suspense.)

#### WHAT IT TAKES TO QUALIFY AN INITIATIVE FOR THE BALLOT

Before a petition to qualify an initiative for the ballot may be circulated, it must be reviewed and approved. Legislative staff reviews the text and may propose recommendations about the initiative language, consistent with the guidelines observed for drafting legislation. Then, the Secretary of State's office must approve the petition form, and the Attorney General's office must perform a legal review for technical sufficiency. Once a petition is approved, it may be circulated for signatures. Montana's constitution provides that, to qualify for the ballot, a constitutional initiative petition must "be signed by at least ten percent of the qualified electors of the state." The constitution further provides: "That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts". (Art. IV, Sec. 9, Mont. Const.) To qualify a statutory initiative for the ballot, signatures must be gathered from "at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. (Art. III, Sec 5, Mont. Const). Once qualified for the ballot, statutory laws govern how pro and con arguments are drafted and formatted for the voter information pamphlet and how initiatives must appear on the ballot.

What changes to Montana's initiative process will come out of the discussions being facilitated by the Montana Consensus Council? Will the initiative to change Montana's constitutional initiative process qualify for the November 2000 ballot? If it does, will it pass? Stay tuned.

#### CONCLUSION

In a July 1998 article for the *Riverfront Times*, Jeannett Batz wrote:

There weren't any fireworks at the signing of the Declaration of Independence but the consequences were just as explosive. For the first time, an official document gave the power of government to the people, not the blue blood or divine will of a monarch.

The people took up the challenge with alacrity, circulating broadsides, holding town-hall meetings, self-governing with messy enthusiasm.

Then they lost interest.

If the current rumblings surrounding the initiative process accomplish anything, I hope it will be to renew citizen interest in America's grand experiment of a democracy in a republic. Because, for all the science and technology available to monitor volcanos, we still don't know when the next one will explode.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL MEETINGS ARE HELD IN HELENA.

### JUNE

June 7, Information Technology Management Study Subcommittee, Federal Building, Room 487, 8 a.m.

June 7, Mental Health Managed Care Subcommittee, Federal Building, Room B7, 8:30 a.m.

June 8, Legislative Audit Committee, Capitol Building, Room 172, 9 a.m.

June 8, Public Information Subcommittee, Federal Building, Room B7, 10 a.m.

June 8, Subcommittee on Statutory Appropriations and Dedicated Revenue, Federal Building, Room 487, 8 a.m.

June 8, Subcommittee on Metal Mines Performance Bond Liability, Federal Building, Room B7, 8 a.m.

June 8-9, Legislative Council, Capitol Building, Room 102

June 8, Legislative Finance Committee, Capitol Building, Room 137, 1 p.m.

June 9, Legislative Finance Committee, Capitol Building, Room 137, 8 a.m.

June 21, Children Families, Health, and Human Services Committee, Capitol Building, Room 172

June 21-22, State Administration, Public Retirement Systems, and Veterans' Affairs Committee, Capitol Building, Room 102

June 22-23, Business, Labor, and Agriculture Committee, Capitol Building, Room 152, 9 a.m.

June 22-23, Education and Local Government Committee, Capitol Building, Room 102

June 23, Transition Advisory Committee, Capitol Building

### JULY

July 4, Independence Day, holiday

July 26, Water Policy Subcommittee, Capitol Building, Room 152

July 27, Eminent Domain Subcommittee, Capitol Building, Room 172, 1 p.m.

July 27, Land Use/Environmental Trends Subcommittee, Capitol Building, Room 152, morning

July 27, MEPA Subcommittee, Capitol Building, Room 152, 1 p.m.

July 28, EQC, Capitol Building, Room 172

